Veronica Sainik @ Ronald v Meluha Life Sciences Sdn Bhd & Ors

HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO WA-22IP-13–02 OF 2020
MOHD RADZI HARUN J
22 JANUARY 2024

Copyright — Infringement — Academic dissertation — Plaintiff filed suit against defendants for infringement of her moral rights over her academic dissertation — Whether Masters dissertation was copyrightable — Whether there were moral rights in Masters dissertation — Whether defendants infringed plaintiff's moral rights — Copyright Act 1987 s 25

The plaintiff filed this suit against the defendants seeking for a declaration under s 25 of the Copyright Act 1987 ('CA') that the defendants had infringed her moral rights over her academic dissertation ('Masters dissertation'). The plaintiff had pursued her Masters at the Faculty of Dentistry, University of Malaya. The first defendant ('D1') was a clinical-stage biotechnology company. D1 was an industry research collaborator with the Faculty of Dentistry, University of Malaya and together, they had conducted many joint research works. The second defendant ('D2') was employed by D1 as the research consultant and the third defendant ('D3') was the research associate at D1. D2 and Prof Dr Sabri Musa, who was then the Head of Conservative Dentistry, Faculty of Dentistry, University of Malaya, applied to the University of Malaya for a research grant for a research project ('collaboration project'). The plaintiff was provided with the opportunity to join the team as a research assistant to gain exposure and learn from the experienced researchers and scientists involved in the collaboration project. The defendants successfully secured a registration for a patent at the Register of Patents Malaysia ('the patent'). The plaintiff alleged that the patent had copied more than half of the contents and data of the Master's dissertation, where the contents, specifically for the methodology aspect, had been modified and used in the patent without the consent of the plaintiff. Consequently, the plaintiff prayed for the registration of the patent in the name of D1 to be invalidated or alternatively for an injunction ordering the defendants to remove the names of D2 and D3 as the inventors of the patent, and damages. The defendants counterclaimed that the plaintiff's action was an abuse of the court's process and the suit was filed as an attempt to damage the defendants' reputation and goodwill.

Held, dismissing the plaintiff's claims and allowing the defendants' counterclaim in part:

(1) The statutory and moral duty to determine the originality or otherwise of the Masters dissertation and whether any portion of that Masters dissertation comprised similarities with any other sources or publications was solely a subject matter between the plaintiff and the university, not with the court. The university had accepted the Masters dissertation as an original thesis written by the plaintiff and having fulfilled all the requisite conditions, the University's Senate had agreed to award her the Masters degree. Having properly conferred with the Masters degree, the university had accepted that the plaintiff had fulfilled her oath against plagiarism and that the university had carried out the necessary checks, and had examined and was satisfied with that oath. There existed copyright in the Masters dissertation, but that copyright had been transferred to the University of Malaya. The defendants had wrongly concluded that as the copyright of the Masters dissertation vested with the University of Malaya, any consent affecting the Masters dissertation shall be obtained from the university and not the plaintiff (see paras 20–21).

(2) Section 25 of the CA applied in that no person may, without the consent of the plaintiff being the author of the Masters dissertation, do or authorise the presentation of the Masters dissertation, by any means whatsoever, without identifying the plaintiff as the author or under a name other than that of the plaintiff as the author. By virtue of s 25 of the CA, moral rights in the Masters dissertation was vested with the plaintiff being the author of the said work (see paras 25–26).

(3) There were some portion or parts of the patent that contained identical or similar parts of the Masters dissertation. However, that alone did not mean that the defendants had breached the plaintiff's moral rights. The portion in the patent which were similar or identical with the Masters dissertation contained neither distortion nor mutilation of the Masters dissertation. There was evidence to support the plaintiff's contention that certain parts of her Masters dissertation were modified and used in the patent document. However, there was not even an iota of evidence adduced that such modification had significantly altered the Masters dissertation. There was also no evidence whatsoever shown that such alteration or modification had adversely affected the plaintiff's honour or reputation. Whilst the plaintiff possessed moral rights over the Masters dissertation, the plaintiff failed to fulfil the statutory requirements under s 25 of the CA to execute and enforce that right. The plaintiff's claim that the defendants infringed her moral rights over the Masters dissertation must fail (see paras 28–29 & 31–32).

(4) The plaintiff's claim against the defendants was not an abuse of the court's process. Instead, the plaintiff was rightly exercising her statutory rights by filing the claim as she owned the moral rights to the Masters

dissertation. Therefore, the defendants' para A of their counterclaim seeking a declaration that the plaintiff's action was an abuse of court process was dismissed. Paragraphs B and C of the defendants' counterclaim were allowed on certain terms. No economic loss was proven by the defendants as a result of the plaintiff's action against them. As such, there was no justification for damages or interests to be ordered in favour of the defendants and paras D and E of the defendants' counterclaim were dismissed (see paras 35–40).

[Bahasa Malaysia summary

Plaintif memfailkan saman ini terhadap defendan memohon satu pengisytiharan di bawah s 25 Akta Hak Cipta 1987 ('AHC') bahawa defendan telah melanggar hak moralnya ke atas disertasi akademiknya ('disertasi Sarjana'). Plaintif telah melanjutkan pelajaran ke peringkat Sarjana di Fakulti Pergigian, Universiti Malaya. Defendan pertama ('D1') adalah syarikat bioteknologi peringkat klinikal. D1 merupakan rakan usaha sama penyelidikan industri dengan Fakulti Pergigian, Universiti Malaya dan bersama-sama, mereka telah menjalankan banyak kerja penyelidikan bersama. Defendan kedua ('D2') telah diambil bekerja oleh D1 sebagai perunding penyelidikan dan defendan ketiga ('D3') adalah rakan penyelidik di D1. D2 dan Prof Dr Sabri Musa, yang ketika itu Ketua Pergigian Konservatif, Fakulti Pergigian, Universiti Malaya, memohon kepada Universiti Malaya untuk mendapatkan geran penyelidikan untuk projek penyelidikan ('projek kerjasama'). Plaintif diberi peluang untuk menyertai pasukan sebagai pembantu penyelidik untuk mendapatkan pendedahan dan belajar daripada penyelidik dan saintis berpengalaman yang terlibat dalam projek kerjasama itu. Defendan berjaya mendapatkan pendaftaran untuk paten di Pendaftar Paten Malaysia ('paten'). Plaintif mendakwa bahawa paten telah menyalin lebih separuh daripada kandungan dan data disertasi Sarjana, di mana kandungannya, khususnya untuk aspek metodologi, telah diubah suai dan digunakan dalam paten tanpa kebenaran plaintif. Oleh itu, plaintif memohon agar pendaftaran paten atas nama D1 tidak sah atau sebagai alternatif untuk injunksi yang memerintahkan defendan membuang nama D2 dan D3 sebagai pencipta paten, dan ganti rugi. Defendan mendakwa tindakan plaintif adalah penyalahgunaan proses mahkamah dan saman itu difailkan sebagai cubaan untuk merosakkan reputasi dan nama baik defendan.

Diputuskan, menolak tuntutan plaintif dan membenarkan sebahagian tuntutan balas defendan:

(1) Kewajipan berkanun dan moral untuk menentukan keaslian atau sebaliknya disertasi Sarjana dan sama ada mana-mana bahagian disertasi Sarjana itu mengandungi persamaan dengan mana-mana sumber atau penerbitan lain adalah semata-mata perkara subjek antara plaintif dan universiti, bukan dengan mahkamah. Universiti telah menerima disertasi

Sarjana sebagai tesis asal yang ditulis oleh plaintif dan setelah memenuhi semua syarat yang diperlukan, Senat Universiti telah bersetuju untuk menganugerahkan beliau ijazah Sarjana. Setelah mendapat ijazah Sarjana dengan betul, universiti telah menerima bahawa plaintif telah memenuhi ikrarnya terhadap plagiarisme dan bahawa universiti telah menjalankan pemeriksaan yang diperlukan, dan telah memeriksa dan berpuas hati dengan sumpah itu. Terdapat hak cipta dalam disertasi Sarjana, tetapi hak cipta itu telah dipindahkan ke Universiti Malaya. Defendan telah tersilap membuat kesimpulan bahawa oleh kerana hak cipta disertasi Sarjana diberikan kepada Universiti Malaya, sebarang persetujuan yang menjejaskan disertasi Sarjana hendaklah diperoleh daripada universiti dan bukannya plaintif (lihat perenggan 20–21).

(2) Seksyen 25 AHC terpakai bahawa tiada seorang pun boleh, tanpa persetujuan plaintif sebagai pengarang disertasi Sarjana, melakukan atau membenarkan pembentangan disertasi Sarjana, dengan apa cara sekalipun, tanpa mengenal pasti plaintif sebagai pengarang atau di bawah nama selain daripada plaintif sebagai pengarang. Berdasarkan s 25 AHC, hak moral dalam disertasi Sarjana diberikan dengan plaintif sebagai pengarang karya tersebut (lihat perenggan 25–26).

(3) Terdapat beberapa bahagian paten yang mengandungi bahagian yang serupa atau serupa dalam disertasi Sarjana. Walau bagaimanapun, itu sahaja tidak bermakna defendan telah melanggar hak moral plaintif. Bahagian dalam paten yang sama atau serupa dengan disertasi Sarjana tidak mengandungi perosakan mahupun pencacatan disertasi Sarjana. Terdapat keterangan untuk menyokong pertikaian plaintif bahawa bahagian tertentu disertasi Sarjananya telah diubah suai dan digunakan dalam dokumen paten. Walau bagaimanapun, tidak terdapat sedikit pun keterangan yang menyatakan bahawa pengubahsuaian tersebut telah mengubah disertasi Sarjana dengan ketara. Juga tiada sebarang keterangan menunjukkan bahawa perubahan atau pengubahsuaian tersebut telah menjejaskan kehormatan atau reputasi plaintif. Walaupun plaintif memiliki hak moral ke atas disertasi Sarjana, plaintif gagal memenuhi keperluan statutori di bawah s 25 AHC untuk melaksanakan dan menguatkuasakan hak tersebut. Dakwaan plaintif bahawa defendan melanggar hak moralnya ke atas disertasi Sarjana harus gagal (lihat perenggan 28–29 & 31–32).

(4) Tuntutan plaintif terhadap defendan bukanlah penyalahgunaan proses mahkamah. Sebaliknya, plaintif telah menggunakan hak berkanunnya dengan memfailkan tuntutan kerana beliau memiliki hak moral untuk disertasi Sarjana. Oleh itu, perenggan A tuntutan balas defendan yang memohon pengisytiharan bahawa tindakan plaintif adalah satu penyalahgunaan proses mahkamah telah ditolak. Perenggan B dan C tuntutan balas defendan dibenarkan atas terma tertentu. Tiada kerugian

ekonomi dibuktikan oleh defendan hasil daripada tindakan plaintif terhadap mereka. Oleh itu, tiada justifikasi untuk ganti rugi atau kepentingan diperintahkan memihak kepada defendan dan perenggan D dan E tuntutan balas defendan telah ditolak (lihat perenggan 35–40).]

Cases referred to

Aktif Perunding Sdn Bhd v ZNVA & Associates Sdn Bhd [2018] 7 MLJ 692; [2017] 10 CLJ 226, HC (folld)

Sawkins v Hyperion Records Ltd [2005] 3 All ER 636; [2005] EWCA Civ 565, CA (refd)

Syed Ahmad bin Jamal v Dato Bandar Kuala Lumpur [2010] MLJU 1015; [2011] 2 CLJ 569, HC (folld)

Legislation referred to

Copyright Act 1987 ss 7(3)(a), 25, 25(2), (2)(a), (2)(b)(i), (2)(b)(ii), (4)
Local Government Act 1976

Ahmad Hafiz bin Zubir (with Nurin Husna bt Abdul Mutti) (Hafiz Zubir & Co) for the plaintiff.
Sri Sarguna Raj (with Soo An Qi) (Christopher & Lee Ong) for the defendants.

Mohd Radzi Harun J:

INTRODUCTION

[1] The plaintiff filed this suit against the defendants seeking for a declaration under s 25 of the Copyright Act 1987 ('the CA') that the defendants had infringed her moral rights over her academic dissertation entitled 'Isolation, Expansion, and In-Vitro Characterisation of Mesenchymal Stem Cells of Dental Origin' ('Masters Dissertation'). The defendants successfully secured a registration for a patent titled 'Isolation, Expansion, and Characterisation of Precursor/Stem Cells from Dental Tissues' at the Register of Patents Malaysia on 23 July 2018 with grant number MY-166810-A ('the patent'). The plaintiff alleged that the patent had copied more than half of the contents and data of the Masters Dissertation, where the contents, specifically for the methodology aspect, have been modified and used in the patent without the consent of the plaintiff. Consequently, the plaintiff prayed for the registration of the patent in the name of the first defendant ('D1') to be invalidated or alternatively for an injunction ordering the defendants to remove the names of the second and third defendants ('D2' and 'D3') as the inventors of the patent, and damages.

[2] The defendants counterclaimed that the plaintiff's action was an abuse of the court's process and the suit was filed as an attempt to damage the defendants' reputation and goodwill and to extort wholly extraneous benefit or

damages. The defendants claimed that the plaintiff has unlawfully interfered with the trade and business of D1 with the mala fide intention to unfairly profit from the said patent owned by D1 and/or to unfairly restrain D1 and its trade and/or business and/or to cause maximum disruption to D1's business and had caused D1 to suffer loss of investment funding as well as potential investment funding opportunity amounting to RM6m and irreparable damage to its business, reputation and goodwill.

[3] The plaintiff's claim was dismissed and the defendants' counterclaim was partially allowed.

[4] The plaintiff now appeal against that decision.

BRIEF FACTS

[5] The plaintiff pursued her Masters at the Faculty of Dentistry, University of Malaya in 2010 and she successfully graduated with a Masters degree in 2013.

[6] D1 is a clinical-stage biotechnology company, developing novel and proprietary therapies intended to extend and enhance the quality of human life. D1's main business is R&D, manufacturing and commercialising regenerative medicine products. D1 was an industry research collaborator with the Faculty of Dentistry, University of Malaya and together, they had conducted many joint research works.

[7] D2 was employed by D1 as the Research Consultant due to his vast experience in setting up a Good Manufacturing Laboratory ('GMP') facility as well as in stem cells research in 2010 and was made D1's Chief Technology Officer in 2012. Since 2017 D2 worked as a researcher at CryoCord Sdn Bhd.

[8] D3 was a Research Associate at D1 but has since left D1 and carries out freelance consultancy for GMP and ISO laboratories.

[9] On 3 February 2009 D2 and DW4, Professor Dr Sabri Musa, who was then the Head of Conservative Dentistry, Faculty of Dentistry, University of Malaya, applied to the University of Malaya for a research grant for a research project entitled 'Isolation, Characterisation and Multilineage Differentiation of Post-Natal Stem Cells from Dental Pulp' ('Collaboration Project'). The duration of the Collaboration Project was 36 months from May 2009-April 2012. The team from the Faculty of Dentistry University of Malaya collaborated with Stempeutics Research Malaysia. D2 was the representative of Stempeutics Research Malaysia and was the scientist advisor to the

collaboration team. The expected Research Output from this Collaboration Project (refer to pp 23–38, Part B, Bundle A1, at pp 30) are as follows:

(a) establishing industry-academia interaction in stem cell technology;

(b) at least four publications in high impact journals;

(c) potential commercialisation focusing on the treatment of dental diseases; and

(d) develop expertise in stem cells research in UM through post-doctoral, PhD and MSc programme ('Research Output (d)').

[10] DW2, who is D2, testified that the plaintiff's contention that the Masters Dissertation was a result of the Collaboration Project was highly misconceived. This is because the Collaboration Project's output was never meant for students like the plaintiff. On the contrary, the plaintiff was provided with the opportunity to join the team as a Research Assistant to gain exposure and learn from experienced researchers and scientists involved in the Collaboration Project. The plaintiff was permitted to use certain raw data obtained from the Collaboration Project for the purposes of her Masters Dissertation, upon obtaining permission from the relevant researchers and scientists.

[11] The plaintiff, DW1, was questioned by the defendants' counsel during cross-examination whether she agrees that there was nowhere mentioned in the Research Output (d) that the Collaboration Project is to enable the preparation of a dissertation by the University's students. She disagreed. Enabling students like her to prepare a dissertation is definitely one of the Research Output of the Collaboration Project, she said, citing the Research Output (d). Her evidence was that as it mandatory for her doing Masters to publish papers and to publish dissertations, which was the intent of Research Output (d).

[12] This court agrees with the defendants' counsel that the plaintiff 's understanding of the said Research Output (d) is totally misplaced. In fact, the defendants do not dispute that the plaintiff is required to submit dissertation to enable her to obtain the Master's Degree. It does not however, envisage a situation where the data used and research conducted as a result of the Collaboration Project is solely to be used for UM's students, such as the plaintiff, to prepare their dissertation. The workings of Research Out (d) is to enable students such as the plaintiff, who has assisted in the Collaboration Project, to use certain raw data obtained from the Collaboration Project for the purpose of the preparation of their dissertation upon getting permission from the researchers and/or scientists. This clear intent of the University was confirmed by DW2 whom had clarified during her testimony that the said Research Output (d) was inserted in order to show that the university is doing

talent development for the purpose of obtaining a research grant. Moreover, whilst the Collaboration Project would require research assistants to achieve the intended purpose of transfer of technology and knowledge, it is surely not the case where the plaintiff herself is required for the purpose of running the Collaboration Project due to her specific expertise, which she does not possess at that point of time as she was still pursuing her post-graduate Masters degree.

[13] This court recognised that despite her role as Assistant Researcher in the Collaboration Project team, the plaintiff along with the key scientists and academics involved had been listed as co-authors in articles based on the research findings published in the following high-impact journals:

(a) article titled 'Inherent Differential Propensity of Dental Pulp Stem Cells Derived from Human Deciduous and Permanent Teeth' — JOE — Vol 36, number 9, published in September 2010 (see pp 158–169, Bundle A1);

(b) Journal of Dental Research titled 'Differentiation of Dental Pulp Stem Cells Into Islet Like Aggregates', published on 18 February 2011 (see pp 181–188, Bundle A1);

(c) article titles 'Human platelet lysate permits scale-up of dental pulp stromal cells for clinical 229–241 applications' in Cryotherapy, published on 27 June 2011 (see pp 227–239, Bundle A1); and

(d) review article on 'The Promise of Human Induced Pluripotent Stem Cells in Dental Research', Hindawi Publishing Corporation Stem Cells International, Volume 2012, published on 22 February 2012 (see pp 248–258, Bundle A1).

[14] During the Collaboration Project, D2 met, communicated and interacted with the plaintiff for purposes of the plaintiff's research and data collection for the Masters Dissertation.

[15] The plaintiff contended that:

(a) the Masters Dissertation was solely a result of her own hard work and therefore copyright subsists in that Masters Dissertation;

(b) at all material times, D2 had not contributed to the Masters Dissertation;

(c) even though she has assigned all her rights in the Masters Dissertation to the University of Malaya by signing an 'Original Literary Work Declaration' on 15 March 2013, she retained the moral rights in the Masters Dissertation by virtue of her being the author of the Masters Dissertation in accordance with s 25 of the Copyright Act 1987;

(d) the defendants had infringed the plaintiff's moral rights in the Masters Dissertation by their acts of filing and registering the patent, 'Isolation, Expansion, and Characterisation of Precursor/Stem Cells from Dental Tissues' patent No MY-166810-A (refer pp 925–987, Bundle A1, and pp 28–70, Bundle C3) without the plaintiff's consent; and

(e) the patent had copied more than half of the contents and data of the Masters Dissertation, wherein the contents, specifically for the methodology aspect, have been modified and used in the patent without the consent of the plaintiff. The defendants had also failed to name the plaintiff as an inventor of the said patent.

[16] The defendants on the other hand contended, among others, the following:

(a) the Masters Dissertation was not a part of or a result of the Collaboration Project;

(b) D2 had significantly contributed to the formation of the Masters Dissertation and agreed to allow part of the research work related only to the Collaboration Project to be included in the Masters Dissertation;

(c) without the authorisation and knowledge of D2, the plaintiff had used, and/or alter wholly or partly the data, figures, charts, graphs, protocols owned by D2 and stored in a staff computer in Stempeutics Research Malaysia for the purpose of the Masters Dissertation;

(d) the passages from the Masters Dissertation allegedly copied by the defendants in the patent are not the plaintiff's original work but were copied wholly/partly from various sources predating the Masters Dissertation. As such, copyright does not subsist in the Masters Dissertation;

(e) consequently, there can be no infringement of moral rights of the Masters Dissertation;

(f) the plaintiff had assigned all her rights in the Masters Dissertation to the University of Malaya via the said Work Declaration. Hence, University of Malaya is the rightful owner of the copyright in the Masters Dissertation, and any reproduction or use in any form or by any means whatsoever of the Masters Dissertation must not be made without first obtaining a written consent from the University of Malaya;

(g) at all material times, D2 and D3 did not copy, use or amend any content from the Masters Dissertation for the purpose of the patent. The patent was created by D2 and D3 as a result of their hard work, labour and skill. Consequently, the patent is rightfully filed under the name of Hygieia Innovation Sdn Bhd (as the first defendant then was), being the employer of the inventors of the said patent, namely D2 and D3; and

(h) based on all the above, the plaintiff had failed to disclose a reasonable cause of action. Instead, the plaintiff filed these proceedings in an attempt to damage the defendants' reputation and goodwill and to extort wholly extraneous benefit or damages, and an abuse of the court's process. This had resulted in the defendants having suffered and continue to suffer serious loss and irreparable damage to its business, reputation and goodwill.

FINDINGS

Is the Masters Dissertation copyrightable?

[17] The defendants argued that although the Masters Dissertation is eligible for copyright, the plaintiff cannot enjoy the protection under the CA as the plaintiff failed to show that she has expended sufficient effort to make the Masters Dissertation original in character, a mandatory requirement under s 7(3)(a) of the CA. In particular the defendants alleged that the Masters Dissertation lacked originality as its main bulk was copied from others' existing works: see *Sawkins v Hyperion Records Ltd* [2005] 3 All ER 636; [2005] EWCA Civ 565.

[18] The defendants derived this argument upon their contention that the substantial contents of the Masters Dissertation was copied from various sources, particulary two dissertations. The first was written by Aimi Naim Abdullah for her Master's programme at the University of Malaya entitled 'Evaluation of human platelet lysate as an alternative growth factor for expansion and hepatocyte differentiation of dental pulp stem cells', which was published in September 2012 ('Aimi's dissertation') (refer to pp 432–631, Bundle A2). The second is titled 'Comparison of Growth Factors Expression Between Stem Cells From Deciduous Periodontal Ligament And Dental Pulp' written by Azalina bt Hj Osman @ Ali, also for her master's programme in the University of Malaya, which was published in July 2012 ('Azalina's dissertation') (refer to pp 310–431, Bundle A2). Aimi's dissertation and Azalina's dissertation predate the Masters Dissertation. The defendants' counsel listed down 20 alleged similarities between the Masters Dissertation and Aimi's dissertation, and seven similarities between the Masters Dissertation and Azalina's dissertation at paras 46 and 48 respectively in his Written Submission.

[19] Whilst this court agrees with the defendants' counsel on the legal requirement to be met by the plaintiff to claim her Masters Dissertation to be copyrightable, it is preposterous, to say the least, to suggest for this court to make a finding of fact and law that the Masters Dissertation was not original.

[20] The statutory and moral duty to determine the originality or otherwise of the Masters Dissertation and whether any portion of that Masters Dissertation comprise similarities with Aimi's dissertation and Azalina's dissertation, or with any other sources or publications for that matter, is solely a subject matter between the plaintiff and the University, not with this court. This court accepts the evidence provided by the plaintiff that the University had accepted the Masters Dissertation as an original thesis written by the plaintiff and having fulfilled all the requisite conditions, the University's Senate had agreed to award her the Master's Degree. This fact was also not disputed by the defendants. This court would take cognizance of the fact that having properly conferred with the Master's Degree, the University had accepted that the plaintiff had fulfilled her oath against plagiarism and that the University had carried out the necessary checks, and had examined and satisfied with that oath. If this court now makes a finding that the Masters Dissertation — which was accepted as original by the University over ten years ago — as plagiarised and copied from other people's works, it would mean that the plaintiff would be stripped off her Masters. If that is the case, at the same time certain form of appropriate punishment could be imposed against all the relevant academics and members of the University's Senate that had approved the Masters Dissertation. If that is not preposterous, I do not know what is.

[21] This court rule that there exists copyright in the Masters Dissertation. But that copyright has been transferred to the University of Malaya, a fact which is not disputed by all parties. Having ruled as such, this court further decides that the defendants had wrongly concluded that as the copyright of the Masters Dissertation vests with the University of Malaya, any consent affecting the Masters Dissertation shall be obtained from the University and not the plaintiff. As the claims before this court is not pertaining to copyright infringement, I would not venture to go further on this issue.

Moral rights in the Masters Dissertation

[22] Moral rights in a work where copyright subsists is statutorily recognised. The relevant part of s 25 of the CA reads as follows:

> (1) For the purposes of this section, the word 'name' includes initials or monograms.
>
> (2) Subject to this section, where copyright subsists in a work, no person may, without the consent of the author, or, after the author's death, of his personal representative, do or authorise the doing of any of the following acts:
>
> (a) the presentation of the work, by any means whatsoever, without identifying the author or under a name other than that of the author; and
>
> (b) the distortion, mutilation or other modification of the work if the distortion, mutilation or modification —
>
> (i) significantly alters the work; and

(ii) is such that it might reasonably be regarded as adversely affecting the author's honour or reputation.

...

(4) The author or, after his death, his personal representative, may exercise the rights conferred by this section notwithstanding that the copyright in the work is not at the time of the act complained of, vested in the author or personal representative, as the case may be.

(5) Any contravention or threatened contravention of this section in respect of a work shall be actionable at the suit of the author of the work or, if he is dead, at the suit of his personal representative, as a breach of statutory duty.

(6) Any damages recovered under this section by a personal representative in respect of a contravention committed in relation to a work after the death of the author of the work shall devolve as part of the author's estate, as if the right of action had subsisted and had been vested in him immediately before his death ...

[23] Azahar Mohamed J (as His Lordship then was) dealt with the novel issue of moral rights within the context of s 25 of the CA as cited above in *Syed Ahmad bin Jamal v Dato Bandar Kuala Lumpur* [2010] MLJU 1015; [2011] 2 CLJ 569. The plaintiff in this case, Dato' Syed Ahmad Jamal, is a highly respected and internationally well-known artist. In 1996 he was awarded the National Laureate by the Government of Malaysia for his contribution in the field of art. He was commissioned by the UMBC Harta Sdn Bhd in 1985 to design and complete a sculpture entitled 'Puncak Purnama' ('Lunar Peaks') and the surrounding landscape on a vacant government land in Jalan Sultan Mohamad near UMBC building Kuala Lumpur. In 2000, the defendant carried out major modifications to the Lunar Peaks without notifying the plaintiff or seeking his consent. The learned judge held that moral rights under s 25 of the CA focus on safeguarding of the author's integrity and reputation. These moral rights are alienable rights and are exercisable during the subsistence of the copyright in the work and at the option of the author only, regardless of whether copyright is at the time of the complaint, vested in the author. In gist, His Lordship laid down the following principles:

(a) moral rights under the CA focus on safeguarding of the author's integrity and reputation. The Lunar Peaks was a sculpture and hence, it was an artistic work protected under the Act;

(b) these moral rights are alienable rights and are exercisable during the subsistence of the copyright in the work and at the option of the author only, regardless of whether copyright is at the time of the complaint, vested in the author;

(c) moral rights consist of the following:

(i) the right to be identified as author (the right of paternity); and

(ii) the right of integrity.

(d) although the defendant has a statutory duty and responsibility under the Local Government Act 1976 to maintain a public place but the defendant does not have a right to desecrate Lunar Peaks and the surrounding landscape without obtaining the plaintiff's consent. In carrying out one statutory duty, it does not mean that another statutory duty (in seeking consent) can be disregarded or ignored. There was a breach of statutory duty by the defendant;

(e) the modification made by the defendant had significantly altered the character and spirit of Lunar Peaks and had completely destroyed the delineation in form and the serenity intended by the plaintiff. Although the altered sculpture was based on the same form as testified by the plaintiff, the significant alterations had completely removed all the traces of the plaintiff's artistic work. The significant distortion, which amounted to derogatory treatment of the Lunar Peaks had adversely affected both the plaintiff's honour and reputation; and

(f) s 25(2) of the Act prevents any person from presenting a work without identifying the author or under a name other than that of the author. Removal of the unique plinth by the defendant had resulted in failure to identify the plaintiff as the author of the works. Hence, the moral right of the plaintiff to be identified as the author of the works had been infringed by the defendant.

[24] In *Aktif Perunding Sdn Bhd v ZNVA & Associates Sdn Bhd* [2018] 7 MLJ 692; [2017] 10 CLJ 226, Wong Kian Kheong J (now JCA) was specifically dealing with the question whether s 25 of the CA applies only to a natural person or could be extended to a corporate body, an issue which is not before this Court. In holding that s 25(2)(a), (b)(i) and (ii) of the CA only confer moral rights on the author of a work who is a natural person, His Lordship followed *Syed Ahmad Jamal* and held that if a party has moral rights in a work under s 25(2)(a), (b)(i) and (ii) of the CA, a breach of an author's moral rights under s 25(2) of the CA constitutes a breach of statutory duty under s 25(4) of the CA for which the author may claim damages.

[25] Having decided that copyright subsists in the Masters Dissertation and applying the principles laid down in *Syed Ahmad Jamal* and *Aktif Perunding*, this court rule that s 25 of the CA applies in that no person may, without the consent of the plaintiff being the author of the Masters Dissertation, do or authorise the presentation of the Masters Dissertation, by any means whatsoever, without identifying the plaintiff as the author or under a name other than that of the plaintiff as the author.

[26] By virtue of s 25 of the CA, moral rights in the Masters Dissertation is vested with the plaintiff being the author of the said work.

[27] The issue is whether the plaintiff had successfully proven that the defendants had infringed the plaintiff's moral rights. A

[28] Having perused the patent and comparing it with the Masters Dissertation, I found that there are some portion or parts of the patent that contain identical or similar parts of the Masters Dissertation. But that alone does not mean the defendants had breached the plaintiff's moral rights. Section 25 of the CA is unequivocally clear that the following elements must be proven by the plaintiff if she is to succeed in her claims against the defendants: B

(a) the defendants' presentation of that part or portion of the Masters Dissertation in the impugned patent was without identifying the plaintiff or employing a name other than that of the plaintiff; and C

(b) the impugned patent document contained distortion, mutilation or other modification of the Masters Dissertation. D

[29] I found that the portion in the patent which are similar or identical with the Masters Dissertation contain neither distortion nor mutilation of the Masters Dissertation. But I agree with the plaintiff that there was modification of the Masters Dissertation. E

[30] However, the provision does not end there. Subparagraph 25(2)(b)(ii) of the CA requires the plaintiff to show that the modification shall:

(a) significantly alters the Masters Dissertation; and F

(b) is such that it might reasonably be regarded as adversely affecting the plaintiff's honour or reputation.

Those two requirements are conjunctive and mandatory.

G

[31] There was evidence to support the plaintiff's contention that certain parts of her Masters Dissertation were modified and used in the patent document. But there was not even an iota of evidence adduced before me that such modification had significantly alters the Masters Dissertation. Even if I accept that the alteration done by the defendants was significant, there was no evidence whatsoever shown to this court that such alteration or modification had adversely affected the plaintiff's honour or reputation. H

[32] In short, I hold that whilst the plaintiff possesses the moral rights over the Masters Dissertation, the plaintiff failed to fulfill the statutory requirements under s 25 of the Copyright Act to execute and enforce that right. The plaintiff's claim that the defendants infringe her moral rights over the Masters Dissertation must fail. I

[33] As the plaintiff's claim for a declaration for the revocation of the patent registration or the alternative prayer that follows are both contingent upon the plaintiff successfully establishing her claim that the defendants had infringed her moral rights over the Masters Dissertation, a claim which had failed, this consequential declaratory prayer must also fail.

[34] Based on the above findings, I dismissed all claims of the plaintiff as enumerated in para 37 of the amended statement of claim.

[35] I do not find that the plaintiff's claims against the defendants is an abuse of the court's process. Instead the plaintiff was rightly exercising her statutory rights by filing this claim as she owns the moral rights to the Masters Dissertation. Therefore, the defendants' para A of their counterclaim seeking a declaration that the plaintiff's action is an abuse of the court process is therefore dismissed.

[36] In para B of the defendants' counterclaim:

(a) D1 asked for a declaration that:

(i) registration of the patent is valid;

(ii) D1 is the rightful and lawful registered proprietor of the patent; and

(iii) D1 has exclusive rights to the patent.

(b) D2 and D3 asked for a declaration that they are the lawful and rightful inventors of the patent.

[37] I allow para B of the defendants' counterclaim but on the following terms:

(a) registration of the patent is declared as valid;

(b) the person named in the Register of patents with regards to the patent shall be the rightful and lawful registered proprietor of the patent; and

(c) the person named in the Register of patents with regards to the patent who is the rightful and lawful registered proprietor of the said patent shall have the exclusive rights to the said patent.

[38] In para C of the defendants' counterclaim, all defendants asked for a permanent injunction to be ordered to stop and prohibit the plaintiff from doing or attempting to do, whether directly or indirectly, anything that is harmful or prejudicial to D1's intellectual property rights including the patent.

[39] I allow prayer C in the following term:

A permanent injunction is ordered to stop and prohibit any person from doing or attempting to do, whether directly or indirectly, anything that is harmful or prejudicial to the rights of the person named in the Register of Patents with regards to the Malaysian Patent No MY-166810-A.

[40] No economic loss is proven by the defendants as a result of the plaintiff's action against them. As such there is no justification for this court to order for damages or interests in favour of the defendants. Therefore, the prayers in paras D and E of the defendants' counterclaim are dismissed.

OBITER DICTUM

[41] Having appraised fully with the history, facts and evidence of the dispute between the parties, I must not fail to express my anguish and sadness at the way things turned out to be out of what could have been one of Malaysia's best inventions in the world of dentistry. Throughout the course of the proceedings, I found that despite the involvement of some of the best brains from Malaysia's best-ranking university there were far too many shortcomings in the management of the collaboration work. Such project is nothing new to the University. Yet even simple forms were not properly filled up. There were no clear directions and statement of terms and conditions on the role, responsibilities, rights and obligations of the parties involved. I hope the University of Malaya and all the other Malaysian universities would learn from this episode, gather the might to admit their inadequacies and never shy to learn from the best.

Plaintiff's claim dismissed and defendants' counterclaim allowed in part.

Reported by Ahmad Ismail